THE ECONOMICS OF LIMITED LIABILITY: AN EMPIRICAL STUDY OF NEW YORK LAW FIRMS

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The choice of organizational form for business and professional service firms has been of interest to lawyers and economists for years. The law offers a menu of choices, including general partnerships (GPs), limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs), limited liability companies (LLCs), and, of course, corporations. Each organizational form has its own set of default rules, governing everything from the distribution of profits to dissolution. Within each business form, parties can alter most of the default rules governing the arrangement.

One of the most important of these default rules is the extent to which individual firm owners will be held personally liable for the collective debts and obligations of the firm. GPs and corporations are considered polar opposites with respect to this default rule, with the corporate default rule being one of limited liability, meaning that, absent special circumstances, corporate shareholders are personally liable for corporate debts only up to the amount of their original investment in the corporation.[1] General partners, by contrast, can be held personally liable for all unpaid partnership debts.[2]

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[1] The exceptions to the general rule of shareholder limited liability are that shareholders will be personally liable: (1) when the corporation is not properly formed, (2) for the amount of any unpaid capital contributions that they have committed to make, and (3) when the veil of limited liability is pierced. JEFFREY BAUMAN, ET AL., CORPORATIONS LAW AND POLICY (5th ed. 2003).

[2] U.P.A §§ 13-15; R.U.P.A. §§ 304, 306.

The significance of this difference in default rules, if any, has been hotly debated by legal academics for some time.[3] In addition, both economists and legal scholars have debated the relative costs and benefits of limited liability, with some observers arguing that the owners' personal liability for the firm's debts provides efficiency benefits that outweigh any costs.[4]

In addition to the rule of full personal liability, many other partnership default rules appear -- at least at first glance – unattractive. For example, the GP default rules include: (1) the rule that profits and losses be split equally among the partners, (2) the one partner/one vote rule, and (3) the guarantee of a partner's right to seek a buyout.[5]

Despite these seemingly unattractive defaults, several theories have emerged regarding the desirability of the partnership form. These theories can be divided into three broad categories: (1) theories based on profit sharing; (2) theories based on the illiquid nature of a partnership interest; and (3) theories based on the unlimited liability of the GP form. The first two categories of explanations apply to partnerships generally, whereas the third theory – unlimited liability – is a justification for the GP form, in particular.

In contrast to the theories posed by economists and legal academics that assert the benefits of unlimited liability, practicing lawyers cite the high costs of unlimited liability

[3] Compare [cite] (arguing that the difference in the limited liability default rule between corporations and GPs is insignificant, because the default rule can be altered through a variety of private mechanisms); with [cite] (arguing that the different liability rule is an important distinction between the GP and corporation).
[4] See infra notes __ and accompanying text (discussing these arguments).
[5] R.U.P.A. § 401 (b) (default rule on profit and losses); R.U.P.A. § 401(f) (default rule on management responsibilities); R.U.P.A. § 29 (default rule on partner buyouts). These default rules can be circumvented or ameliorated in several ways. First, and most obviously, the parties can opt for another organizational regime, such as the LLC or corporate form. Second, the default rules other than limited liability can be altered through a detailed partnership agreement. Finally, the rule of unlimited liability can be ameliorated through contract and insurance.

and argue that, given recent innovations in organizational forms, no valid reasons exist for the formation of business or professional enterprises in the GP form.[6] In fact, some legal advisors go so far as to assert that any lawyer who chooses to organize clients as a GP is committing malpractice.[7]

If the practitioners are right, one must then question why the GP form exists at all. In this Article, we add to the justifications of the GP form proposed by legal academics and economists by advancing an additional rationale for the GP form. We argue that, if unlimited liability really provides no benefits to the members of business and professional firms, then it must operate as a penalty default rule that forces firm members to reveal relevant information to courts and other third parties.

In the last fifteen years, all 50 states have passed laws that permit the formation of an LLP.[8] To become an LLP, a general partnership only needs to file a form with the secretary of state, pay a nominal fee, and comply with a few other formalities.[9] If the partners want, the old partnership agreement can continue to govern the newly formed LLP. The major difference between the GP and the LLP is that, in the LLP, the partners

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[6] See, e.g., Lee Berton & Joann S. Lublin, *Seeking Shelter: Partnership Structure is Called into Question as Liability Risk Rises*, WALL ST. J. at A1 (June 10, 1992) (quoting Belverd Needles, former director of DePaul University's School of Accounting as stating, "[w]ith such risks, the partnership may go the way of the dodo.") more cites

[7] cites

[8] See ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG & RIBSTEIN ON LIMITED LIABILITY PARTNERSHIPS, THE REVISED UNIFORM PARTNERSHIP ACT, AND THE UNIFORM LIMITED PARTNERSHIP ACT (2001) 15 (Aspen 2003) (hereinafter Bromberg & Ribstein "Limited Liability"). Some states, including New York, California, Nevada and Oregon, only offer LLP status to professional firms.

[9] See, e.g., NY Partnership Law § 121-1500. In New York, a general partnership that renders professional services may become an LLP by filing a registration with the Secretary of State of New York, accompanied by a $200 filing fee. §121-1500 (a)-(c).

are liable only for debts stemming from their own conduct, or the conduct of someone under their supervision.[10]

The creation of the LLP form allows a natural experiment of the theories advanced regarding the costs and benefits of the partnership form. To test these theories, we collected data on the 146 law firms listed in Martindale-Hubble and NALP as having their primary offices in New York, New York and more than 25 lawyers.[11] Since 1994, all of these law firms have had a choice of whether to remain a GP or adopt LLP status. We supplement the empirical analysis with extensive interviews of three sets of individuals knowledgeable about and active in the debate regarding the choice of organizational form among New York law firms: law firm partners, law firm consultants, and malpractice insurers.

If the theories asserting that profit-sharing and illiquidity are the primary reasons for the existence of partnerships are true, then all or nearly all of the firms in our sample should have opted for the LLP form, as it provides all of the same benefits of profit sharing and lack of liquidity, without the costs of unlimited liability. Similarly, if the theory that the GP form operates as a penalty default regime is correct, then all or most firms should have abandoned that regime when given an opportunity.[12] In contrast, if the theories asserting unlimited liability as the primary benefit of the partnership form are

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[10] See Bromberg & Ribstein, Limited Liability, *supra* note 8, at § 1.02. States differ in the limitations on liability provided by LLP status. Some states limit liability for all claims, whether rooted in contract or tort. See, e.g.,[cites]. Others states limit liability for selected types of tort claims. See BROMBERG & RIBSTEIN, LIMITED LIABILITY, *supra* note __, at 2-17 (discussing the variations among state LLP statutes).

[11] The sample also includes seven "international" firms whose only US office is in New York.

[12] In order to operate as an information-forcing penalty default rule, it is not necessary that all firms perceive the rule as a penalty to be avoided. Instead, contract law scholars merely insist that the rule be "minoritarian" in that it fails to provide the default rule that most contracting parties would want, forcing a majority of contracting parties to draft around the rule and reveal information. See Ian Ayres & Robert Gertner, *Majoritarian vs. Minoritarian Defaults*, ___ STAN L. REV. __ (2002).

true, then a majority of firms should remain GPs, or the firms should break down regarding choice of organizational form on some observable criteria.

Contrary to our expectations, a sizeable number of firms -- about thirteen percent -- remain GPs. Sixty-seven percent have become LLPs.[13] This mix is puzzling. Our analysis shows no significant variation based on number of lawyers, number of offices, [or the level of information asymmetry between the firm and its clients]. Furthermore, on the surface, the difference between these firms is minimal. Each has a sophisticated practice, with sophisticated clients. They each provide roughly the same "product" -- namely high-end legal services.

The movement of most firms to LLP status and the lack of a clear relationship between individual firm characteristics and choice of organizational form raise questions about the value of unlimited liability, at least as applied to law firms. However, the fact that a sizeable number of firms remain GPs undermines the explanations based on profit sharing and illiquidity as well. Because unlimited liability is the only meaningful distinction between the GP and LLP, unless many sophisticated law firms suffer from extreme inertia, it must be unlimited liability, rather than profit sharing or illiquidity, that at least some firms perceive as valuable.

Although the fact that the large majority of firms have opted for limited liability is consistent with the penalty default theory, two other aspects of the study are troubling for this hypothesis. First, a sizeable number of firms remain GPs. If unlimited liability is truly a penalty, then why are some of the most legally sophisticated firms in the United

[13] The remaining firms are PCs or LLCs. For reasons discussed in more detail in Part II, we dropped the PCs and LLCs from the logit analysis.

States voluntarily choosing it? Second, the choice between GP and LLP fails to divide along coherent lines. From the data, we cannot discern why the penalty aspects of the GP form induced some firms to switch and not others.

In the end, we argue that law firms today increasingly view the unlimited liability associated with the GP form as burdensome and, consistent with the penalty default hypothesis, predict that, at some point in time, nearly all the firms in our sample will file as LLPs. At the same time, however, the perceived benefits of unlimited liability are real to many law firm partners and the public assertions of many lawyers that the GP form provides no countervailing benefits to offset the costs of unlimited liability are patently inconsistent with the behavior of many large and prestigious New York law firms. We conclude, instead, that the choice of organizational form is a complicated matter, dependant on a variety of factors, including the behavior of other similarly situated firms that the decision makers consider competitors for prestige and clients.

This article proceeds as follows. Part I reviews six theories traditionally advanced as rationales for the partnership form: (1) insurance, (2) monitoring, (3) generating trust and collegiality, (4) quality signaling, (5) preventing grabbing and leaving, and (6) providing incentives to mentor. In Part I, we develop a seventh justification for the GP form: the penalty default theory.

Although there are reasons to approach many of the traditional theories of partnership form with skepticism, each yields a testable hypothesis that we examine in Part II. Based on our empirical analysis and subject to the caveats discussed in Part II, we reject all the partnership theories other than the penalty default theory. In particular, our interview data supports the notion that unlimited liability is increasingly viewed as a

penalty, but also indicates that, for many law firm partners, the benefits of unlimited liability are real and are not necessarily outweighed by increasing liability fears. Part III concludes that the choice of organizational form is more complicated than either academic researchers or practicing lawyers have recognized.

I. THEORIES OF PARTNERSHIP FORM

In this Part, we discuss six theories advanced by researchers to justify the partnership form. In addition, we add a seventh theory -- a penalty default theory -- to the mix. Each of these theories is dependent on one of three characteristics associated with partnerships: profit-sharing, a characteristic of both GPs and LLPs; illiquidity, a characteristic of both GPs and LLPs; and unlimited liability, a characteristic of the GP, but not the LLP.

As we elaborate throughout this section, there are reasons to doubt the explanatory power of many of the traditional theories. For example, contrary to the assumptions of many economists, profit-sharing is not a unique characteristic of the partnership form and can be easily accomplished through an LLC or corporation, albeit with greater transaction costs in the case of the corporation. In addition, illiquidity is a common characteristic of both LLCs and close corporations and, through the use of standard-form restrictions on resale, these investments can be made just as illiquid as the partnership interest. Nonetheless, we test each of these theories of partnership form in the following Part II of this Article.

A. Insurance

The insurance theory of partnership form is based on the perceived efficiency benefits of profit sharing and is frequently invoked to explain the tendency of professionals to organize as partnerships. The insurance theory starts by noting that professionals make significant investments in human capital.[14] Such investment is hard to diversify and, hence, risky. Further, an insurance market for human capital does not exist because of moral hazard and adverse selection. Consider a lawyer who invests heavily to become a skilled bankruptcy attorney. The return on the lawyer's investment is linked to the demand for bankruptcy work. If, for instance, there is a prolonged economic boom, the return on the lawyer's investment is small. The lawyer cannot mitigate this risk through insurance, because any insurer -- fearing moral hazard on the part of the attorney -- would feel uncomfortable writing a policy that paid out when an attorney's business was slow.

How, then, does the bankruptcy attorney insulate herself from risk? According to some economists, she teams up and forms a partnership with other attorneys. The partnership allows the attorney to share profits with attorneys in different areas. Through profit-sharing, the attorneys diversify their individual investments in human capital. Moral hazard remains a problem, however, because a partner might shirk, knowing that she will still recoup income through the profit-sharing arrangement. Nonetheless, economists argue that the partners in a professional firm are better able to monitor (and therefore control) moral hazard than outside insurers.

[14] For formal articulations of the insurance argument see Kevin Lang & Peter-John Gordon, *Partnerships as Insurance Devices: Theory and Evidence*, 26 RAND. J. OF ECON. 614 (1995) and Martin Gaynor & Paul Gertler, *Moral Hazard and Risk Spreading in Partnerships*, 26 RAND J.OF ECON. 591 (1995).

For the sake of analysis, we accept the premises of the insurance argument that profit-sharing is useful because it reduces the risk of human capital investment and partners are better than outside insurers at controlling moral hazard. From these premises, however, the choice of partnership form does not inevitably follow.[15] Nonetheless, we test the validity of the insurance hypothesis in Part II of this Article. If the insurance explanation adequately explains the advantages associated with the partnership form, then all or nearly all of the firms in our sample should be LLPs, because the LLP provides all of the insurance benefits associated with partnerships without the associated costs of unlimited liability inherent in the GP form.

B. Monitoring Fellow Partners

The monitoring theory of partnership takes two different forms, one based on profit-sharing and the other based on unlimited liability.

1. Profit-Sharing and Monitoring

In an early article on this subject, Armen Alchian and Harold Demsetz propose that employee-ownership is useful when it is hard to monitor the employee's input in the production process.[16] By, in effect, making each employee a residual claimant on profits,

[15] A corporation, LLC, or PC could all share profits in the same way as a partnership. Although such profit-sharing arguably entails higher transaction costs in the corporate form, it is not clear that those costs outweigh the benefits of limited liability provided by the corporate form.

[16] Armen Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 Am. Econ. Rev. 777 (1972). Henry Hansmann argues that Alchian and Demsetz overstate the monitoring problem associated with professional work. He points out that professional firms go to great lengths to figure out how much each partner adds to the final product by, for example, tracking billable hours. In addition, he notes that most profit-sharing agreements reflect the individual productivity of each partner. HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 70-71 (Harvard 1996). See also, Kevin Kordana [add cite] (making a similar argument). Others, however, have challenged Hansmann on this point, arguing that

the employee-owned firm induces monitoring of each employee by every other employee. The inability to monitor an individual employee's input, Alchian and Demestz claim, is the reason why many professional firms are employee-owned partnerships.

More recently, Eugene Kandel and Edward P. Lazear argue that peer pressure can produce higher effort among a firm's members.[17] Because firm members are more likely to apply pressure on other firm members to perform when they empathize with those whose income they affect – i.e. the firm's stakeholders – peer pressure is more likely to be an effective motivating device in firms in which profits are shared among similarly situated individuals.[18] Accordingly, partnerships are more likely to produce higher peer pressure and induce higher effort levels than are firms that are not organized for profit sharing.

As with the insurance justification for partnership, we accept the monitoring premise for the sake of analysis. Yet the choice of partnership form does not inevitably follow from this premise. As widely discussed in the worker cooperative literature, the monitoring explanation is an argument in favor of employee-ownership rather than investor-ownership of firms.[19] Nonetheless an employee-owned firm does not have to be a partnership. The close corporation and LLC are also typically employee-owned entities in which the residual claimants on profits are directly involved in management.[20]

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monitoring the work-product of professional service providers such as lawyers is not as easy as Hansmann suggests. See, e.g., David Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581, 1598-99 (1998).

[17] Eugene Kandel & Edward P. Lazear, *Peer Pressure and Partnerships*, 100 (4) J. POLITICAL ECONOMY 801, 805 (1992) (noting that, although peer pressure guarantees higher effort level, it does not guarantee higher utility, as peer pressure itself is a cost borne by the firm's members).

[18] Kandel & Lazear, at 816.

[19] Add cites

[20] Check worker co-op literature – how are they typically formed? Hart & Moore?

Nonetheless, we test the profit-sharing based monitoring explanation in Part II of this Article. If profit-sharing through the partnership form really explains the benefits associated with partnership, then all or nearly all of the firms in our sample should have adopted LLP status, as it provides all of the profit-sharing benefits of the GP form without the associated costs of full personal liability.

2. Unlimited liability and monitoring

Another version of the monitoring argument asserts that unlimited liability encourages monitoring of each partner by every other partner. In the event of another partner's misstep, a partner does not want to be on the hook for any award in excess of the partnership's assets and insurance coverage. Accordingly, under this version of the monitoring theory, unlimited liability induces each partner to pay close attention to the activities of her fellow partners. As a result, effort and care are maximized, resulting in a better product. Since the ease and effectiveness of monitoring are likely to be a function of the number of offices (geographic dispersion), the number of lawyers (firm size), and the firm's rate of growth, the monitoring hypothesis suggests that the regression results will reveal a statistically significant effect of these variables on the choice of organizational form.[21]

[21] Kandel & Lazear at 812-13 (demonstrating that both the effectiveness of and the incentive to monitor decrease with increases in firm size and geographic dispersion.) The intuition behind the rate of growth variable is that quickly growing firms may have an increased need to, and greater difficulty in, monitoring firm members.

C. Generating Trust and Collegiality

A third theory of partnership form involves bonding and the creation of trust among partners. A partner, the theory goes, signals trust in her fellow partners by agreeing to personal liability for their actions. This trust creates a more congenial work environment, enhancing the quality of the product.

At first glance, the trust justification – because of its reliance on the unique unlimited liability characteristic of the GP form – seems a plausible explanation for the choice of GP form. However, as noted in the debate regarding the benefits of limited liability, the GP form is not the only mechanism for placing an owner's personal wealth at stake in a business or professional enterprise.[22]

Nonetheless, we test the collegiality hypothesis in Part II of this Article. Because larger groups, more geographically dispersed groups, and quickly growing groups are typically considered less collegial than small, stable, closely-knit groups,[23] the collegiality hypothesis suggests that the regression results will reveal a statistically significant effect of the number of lawyers variable, the number of offices variable, and the rate of growth variable on the choice of organizational form.

D. Quality Signaling

The signaling theory of partnership takes two different forms, depending on the source of the signal. In the initial formulation, firms signal quality by adopting unlimited liability. In the more recent articulation, profit-sharing serves as the signal.

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[22] cites to LL debate. For example, the partners could form a limited liability entity, but personally guarantee debts. They could also post personal bonds, or over-capitalize the corporation, rather than withdrawing funds in excess of that needed for working capital.

[23] Cite to literature on trust and collegiality.

According to the quality signaling theory, the need for signaling arises whenever consumers are unable to assess the quality of a product. As a result, they are reluctant to buy the product without some quality assurance.

1. Unlimited Liability and Signaling

One version of the quality signaling theory asserts that unlimited liability encourages each partner to take more care in the provision of goods and services in order to avoid losing personal assets. In addition, as discussed in Part I.B.2, unlimited liability is thought to encourage monitoring of each partner by every other partner. Knowing these facts, consumers feel more comfortable about the quality of the product. In other words, unlimited liability is though to provide a credible signal of quality.

There are reasons to approach the quality signaling argument with skepticism. Although unlimited liability might serve as a quality signal, it is not the only possible signal of quality. For example, a firm can also signal quality by maintaining a good reputation, established through repeated interactions with consumers. For unlimited liability signaling to work, one must demonstrate that unlimited liability is the cheapest credible signal of quality.

Despite this skepticism, we test the unlimited liability version of the quality signaling theory in Part II of this Article. Because the quality signaling argument depends on information asymmetry between producers and consumers of products (in this case, legal services), we predict that firms whose clients possess less information regarding the quality of legal services they receive should have a greater need to engage in this type of quality signaling than firms whose clients are well-informed regarding the

quality of legal services they purchase. Because research shows that clients with a higher number of in-house counsel are more informed about the quality of legal services provided by law firms,[24] this version of the signaling hypothesis suggests that the logit model results will reveal a statistically significant positive effect of the in-house counsel variable on the choice of organizational form.

2. Profit-Sharing and Signaling

Jonathan Levin and Steven Tadelis advance a different signaling theory of partnership, focusing on profit sharing.[25] They start with the notion that an employee-owned firm engaged in profit sharing is less inclined than a corporation to hire new workers.[26] In a profit-sharing partnership, each partner cares about profits per partner, not total profits. As a result, a new partner will not be welcomed into the firm unless her additional profit is greater than the profits produced by the average partner. In contrast, because a corporation cares about total profits, it will bring in new workers if the marginal benefit of that worker is greater than their marginal cost to the firm. Because the partnership focuses on average profits rather than the marginal increase in profits, a profit-sharing partnership has an incentive to hire higher quality workers than the corporation.[27]

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[24] Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837 (1998); ROBERT L. NELSON, PARTNERS WITH POWER: SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 59 (1988).
[25] Jonathan Levin and Steven Tadelis, *Profit-Sharing and the Role of Professional Partnerships,* Duke-UNC Micro-Theory Working Paper (November 2003).
[26] Benjamin Ward, *The Firm in Illyria: Market Syndicalism*, 48 AM. ECON. REV. 566 (1958).
[27] Levin and Tadelis demonstrate that this is not always an optimal result. If there is no asymmetric information in the market, the partnership operates inefficiently. It hires workers of too high a quality and provides too high a quality of product. Put another way, in the "full-information" market consumers prefer to pay less and receive a lower quality product than the profit-sharing partnership produces.

In markets where there are informational disparities, however, both the corporation and the partnership have an incentive to hire less able workers, hoping that the consumer won't notice the resulting loss in quality. Levin and Tadelis conclude that the incentive to "cheat" on worker quality is mitigated in a partnership, because of the partnership's initial preference for higher quality workers. They argue that this explains why professional firms are more apt than other types of firms to organize as partnerships: the market for professional services (for example, law, medicine, or accounting) contains large informational disparities, making the choice of the partnership form efficient.

As previously discussed in Parts I.A. and B. of this Article, the partnership form is unnecessary to attain the benefits of profit-sharing. As a theoretical matter, we thus find it unlikely that any partnership theory based on profit-sharing, including signaling theories, can account for the choice of organizational form among New York law firms. Nonetheless, we test the profit-sharing version of the quality signaling theory in Part II of this Article. If Levin and Tadelis are correct that signaling profit-sharing to customers is the primary benefit provided by the partnership form, then all or nearly all of the firms in our sample should be LLPs, as the LLP provides all of the profit-sharing benefits of the partnership form without the accompanying costs of unlimited liability necessitated by the GP form.

E. Preventing "Grabbing and Leaving"

According to the grab and leave theory of partnership, certain types of businesses – specifically, the practice of law – benefit from an up or out system of partnership.[28] This is because, over time, attorneys develop client-specific assets in the form of knowledge and expertise in the handling of specific clients. This expertise gives senior lawyers significant power over their employers. By threatening to "grab" their clients and leave the firm, these lawyers can extract a higher share of the firm's profits.

To prevent this, law firms develop the up or out system of partnership in which associates are either fired before they get a chance to develop a relationship with clients or are promoted to residual claimants on the firm's assets.[29] This is more important in law firms than in conventional firms because law firms lack the ability to establish property rights in client-specific knowledge.

The partnership structure effectively eliminates the defection of partners, by maximizing profits per partner, rather than total profits.[30] According to Rebitzer and Taylor, only under the partnership structure can senior attorneys be paid enough to prevent them from grabbing and leaving with the firm's clients, because the partnership structure results in higher profits per partner, even though the corporation results in higher total profits.[31]

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[28] See, e.g., Ronald Gilson and Robert Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985); James B. Rebitzer & Lowell J. Taylor, *When Knowledge is an Asset: Explaining the Organizational Structure of Large Law Firms* (working paper on file with author).

[29] The firm is unable to write enforceable contracts that effectively prevent grabbing and leaving due to the ABA Model Rules, which prohibit contracts that limit a client's freedom to choose her lawyer. See, Rebitzer at __; Rule 5.6 Model Rules; Hillman at __.

[30] Rebitzer & Taylor at 10.

[31] Id. at 12. See also infra notes __ and accompanying text (discussing this assumption in connection with the Levin and Tadelis theory).

The Rebitzer and Taylor theory, however, is not a convincing explanation of the benefits of the partnership form. Like many economists, Rebitzer and Taylor assume that corporations are, by definition, entrepreneur-owned firms and that partnerships are, by definition, employee-owned firms.[32] Because employee owned firms are more profitable under certain circumstances that are important to professional firms, many economists believe that this explains the prevalence of the partnership structure among professional firms and the prevalence of the corporate structure among industrial firms. However, neither corporations nor LLCs are necessarily entrepreneur-owned firms. In fact, it is quite common in close corporations and small LLCs to see a complete overlap of ownership and management, as is the case in a partnership.

Nonetheless, we test the grab and leave hypothesis in Part II of this Article. Because the LLP and GP are identical in the extent to which they foster profit-sharing and would thus equally prevent grabbing and leaving, if the grab and leave theory is an adequate explanation for the advantages of partnership relative to other organizational forms, then all or nearly all of the firms in our sample should be LLPs. Again, this is because the LLP provides all of the benefits of profit sharing without any of the GP's associated costs stemming from unlimited liability.

F. Incentives to Mentor

One of the more creative justifications for the partnership form involves mentoring.[33] The mentoring theory begins from the premise that much professional work requires the

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[32] Rebitzer & Taylor at 12.

[33] See Alan Morrison & William J. Wilhelm, Jr., *Partnership Firms, Reputation and Human Capital*, OFRC Working Paper Series (2003)

development of human capital and many professionals require mentoring in order to enhance their skills. The junior associate, for instance, needs a senior partner to teach her how to conduct a trial or close a deal. As the professional ages, she has an incentive to horde her knowledge and avoid mentoring new entrants to the profession. She would prefer to take her knowledge and leave the firm, keeping all of the benefits of her knowledge to herself. Partnerships, however, are relatively illiquid forms of investment, making exit difficult. To maintain a pool of skilled workers to promote, the senior professional engages in mentoring. This mentoring is profitable because it increases the return on the partner's illiquid investment in the partnership.

Mentoring is not a wholly satisfactory explanation for the existence of partnership and almost certainly fails to explain the choice of organizational form among New York law firms. Close corporations, LLCs and LLPs also represent relatively illiquid investments. In fact, such investments can be made just as illiquid as a partnership interest through the use of relatively routine restrictions on the transfer of interests. In addition, although the partnership default rules create an illiquid investment, as an empirical matter most partnership agreements have buyout provisions ameliorating this effect. [34]

Nonetheless, we test the mentoring theory in Part II of this Article. Because there is no liquidity difference between the GP and LLP (in fact, a firm that files for LLP status need not alter the underlying GP agreement, leaving any buyout provisions completely unaltered), if mentoring truly explains the advantage of the partnership relative to other organizational forms, then all or nearly all of the firms in our sample should be LLPs.

[34] See Ribstein, Corporations, supra note __, at 12.

This is because, like all of the partnership theories based on illiquidity or profit-sharing explanations, the LLP provides all of the purported benefits of the GP, without the accompanying costs of unlimited liability.

G. The Partnership Penalty

The penalty default theory of partnership arises from the fact that the GP is the ultimate default regime for businesses operated by more than one person. If two or more parties run a business for profit and do nothing else, the GP default rules apply.[35] The case law is full of situations where parties unintentionally entered into a business and ended up a partnership.[36]

We propose that the GP default rules may make sense – and may, in fact, be socially desirable – because they penalize parties who fail to formalize their arrangements, either by affirmatively choosing an organizational form that requires notification to the state, or through elaborate contractual drafting. In the terms familiar to contract law scholars, the entire general partnership regime may operate as an information-forcing default rule.

The state may desire such information forcing from business and professional service firms for a variety of reasons. First, if parties must explicitly resolve many

[35] See White Consul. Indust., Inc. v. Waterhouse, 158 F.R.D. 429, 434 n.7 (D.Minn. 1994) (stating that, "whether a legally binding partnership has been formed is a question of fact which can be inferred from the partners' actions. We are aware of no requirement that, in order to verify its formation, a partnership agreement must be filed with the State[.]"); Uniform Partnership Act (1914) ("U.P.A.") § 6 (defining "partnership"); Revised Uniform Partnership Act (1997) ("R.U.P.A.") §§ 101(4), 202 (defining "partnership"). In what follows, we will note situations in which the U.P.A. and the R.U.P.A. default rules differ.

[36] See Reddington v. Thomas, 45 N.C. App. 236, 262 (1980); Bass v. Bass, 814 S.W.2d 38 (Tenn. 1991); Howard Gault & Son v. First Natl. Bank, 541 S.W.2d 235, 237 (Tex. Civ. App. 1976). On the formation of partnerships, see generally ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON PARTNERSHIP § 2.05 (Aspen 2003) (hereinafter BROMBERG & RIBSTEIN "Partnership").

important issues -- such as, for example, the division of profits – through careful negotiation and drafting, the information gathering burden on courts and creditors is reduced. Second, state notification of the existence of a for-profit firm enables the state to take certain actions with respect to that firm. For example, the state can more easily tax and regulate for-profit firms when it has been alerted to their existence.[37]

If the GP rules are a penalty default regime, then all or most firms should abandon that regime when given the opportunity. Therefore, if the penalty default theory of partnership is the primary reason for the continued existence of the GP form, then all or most of the firms in our sample should have opted for LLP status.

II. THE DATA

A. Data Collection

To explore the choice and determinants of organizational form, we collected data on the choice of organizational form among New York City law firms -- that is, law firms listing New York City as their main office.[38] We limited our study to New York City firms for a variety of reasons.[39] By restricting our sample to firms in a particular region, we were able to minimize variations in the choice of organizational form based on

[37] See Larry E. Ribstein, *Why Corporations?*, Univ. of Illinois Law and Economics Working Paper 33-__ (2003) (hereinafter, Ribstein "Corporations").
[38] As noted, *supra* note __, the sample also includes international firms with a single US office in New York. We constructed a dummy variable for the international firms ("1" for international firms, "0" for domestic firms). The dummy is then added as an independent variable in the logit model.
[39] Bob Hillman has done the other major empirical study looking at the choice of form for law firms. See Robert W. Hillman, *Organizational Choices of Professional Service Firms, an Empirical Study*, 58 BUS. LAW. 1387 (2003). Hillman constructs a nationwide database of law firms. Although a welcome addition to the literature, Hillman does not use the data to test the economic theories concerning partnerships.

geographic or cultural differences, as well as variations based on differences in the state legal regime or ethics code.[40]

The sample is divided into two parts: (1) law firms with 50 or more attorneys ("large firms") and (2) law firms with between 25 and 50 attorneys ("small firms"). There are 146 firms in the sample -- 78 large firms and 68 small firms. We used seven sources to build the sample: (1) Martindale Hubble; (2) the Directory of Legal Employers (NALP); (3) filings from the New York Secretary of State; (4) the list of profits per partner for the top 200 law firms published by the American Lawyer; (5) the National Law Journal 250, a listing of the 250 largest firms by revenue; (6) *Of Counsel*, an annual survey of the nation's 700 largest law firms; (7) individual law firm websites; and (8) telephone conversations with selected law firms to verify or clarify certain information.

We then supplemented this empirical data with a series of interviews of individuals active in and knowledgeable about the choice of organizational form by New York law firms. Specifically, we interviewed: (1) partners at law firms in our sample who had been involved in their firm's decision regarding the choice of organizational form; (2) legal consultants, who advise law firms on a variety of matters, including the choice of organizational form; and (3) insurers, who base their malpractice liability rates

[40] For example, converting from a PC to an LLP has large negative tax consequences. See cites. In addition, many firms in states whose PC statute (unlike New York's) provided an advantageous liability shield converted from GPs to PCs some time ago. As a result, these firms are effectively prohibited from filing as an LLP, even if they might desire to do so. Similarly, in some jurisdictions, local tax codes may affect the choice of organizational form. For example, New York City and New York State taxes PCs more heavily than partnerships. See Terrence A. Oved, *New York State Limited Liability Partnerships*, NEW YORK STATE BAR JOURNAL (March/April 1995) (noting that "[g]eneral partnerships do not pay . . . state tax on their profit but rather a 4% unincorporated business tax to New York City" and "a law firm organized as a professional corporation must make an annual tax payment of up to 1.8% and approximately 9% of its net income, respectively, to New York State and New York City"). Presumably because of these tax considerations, only two firms filed for PC status after the LLP statute was enacted.

on a variety of factors thought to correlate with the probability of malpractice liability and, thus, collect information from law firms on those factors.

Martindale-Hubble and NALP provided firm names, number of lawyers, practice areas, number of offices, and choice of organizational form. We verified the Martindale-Hubble and NALP information by consulting firm websites and, in a few cases, called the firm's offices to verify information that remained unclear after consulting the website.[41] Finally, we verified each firm's organizational form (and, for firms that were organized as LLPs, LLCs, or PCs, collected filing date information) from filings with the New York Secretary of State's office.[42]

When Martindale Hubble or NALP listed a firm as having multiple offices, we again consulted the firm's website to ensure that the firm listed New York City as the main office. We included in the sample firms with two main offices, so long as New York City was the location of one of the main offices. *American Lawyer* was used to collect per partner profit data on the thirty-six New York law firms that are among the 200 most profitable in the country.

The *National Law Journal 250* provided client information and *Of Counsel* provided information on each client's number of in-house counsel. Finally, *NALP* provided starting associate salaries and was used to calculate the rate of growth of each firm, based on the number of firm lawyers at 5-year intervals.

[41] In cases where the number of offices listed on the firm's website conflicted with the number of offices provided in Martindale-Hubble or NALP, we used the number of offices listed on the firm's website.

[42] In several cases, the choice of organizational form indicated by Martindale-Hubble or NALP varied from information provided by the law firm's website and the New York Secretary of State's Office. In these cases, we used the information provided by the Secretary of State. In every case, the firm's website correctly identified the choice of organizational form, as reported by the Secretary of State's Office.

The combined raw data for large New York law firms is attached as Appendix A to this article. Combined raw data for small New York law firms is found in Appendix B. Appendix C lists the thirty-six most profitable New York law firms, arranged by per partner profits for the year 2002.

B. *Empirical Results*

1. General Results

Tables 1 and 2 below provide summary statistics for the data collected on New York law firms. As is evident, the large majority of firms (67%) are LLPs, whereas only 13% are GPs.[43] The average number of offices is higher for LLPs than for GPs for both small and large firms, as is the average number of lawyers. As demonstrated in the logit model in Part II.B.3.b., however, neither of these variables is a statistically significant predictor of the choice of organizational form.

[43] The remaining firms are PCs and LLCs. See infra note 44 (breaking down these numbers).

Table 1
GP Summary Statistics

	Large Firms	Small Firms	Combined
Number GPs	12	7	19
GPs as Percent of Total[44]	15.38%	10.29%	13.01%
Average Number of Offices	5.75	1.71	4.26
Std. Dev. Number of Offices	4.13	.95	3.84
Average Number of Lawyers	270.17	28.57	181.16
Std. Dev. Number of Lawyers	228.09	1.98	214.78

[44] In addition, 5 large firms (6.4%) and 22 small firms (32.3%) were PCs, for a total of 27 (18.49% of the combined total). Also, although no large firms were organized as LLCs, 2 small firms were (1.36% of the combined total).

Table 2
LLP Summary Statistics

	Large Firms	Small Firms	Combined
Number LLPs	61	37	98
LLPs as Percent of Total	78.2%	54.4%	67.1%
Average Number of Offices	6.95	2.21	5.16
Std. Dev. Number of Offices	7.8	1.18	6.59
Average Number of Lawyers	367.26	35	241.81
Std. Dev. Number of Lawyers	532.24	7.66	448.84

2. Filing Patterns

Information regarding the LLP filing dates of large firms, small firms, and elite firms is graphically depicted in Chart 1.[45] As the bar chart shows, LLP filings peaked in 1994-1995, the two-year period after New York's LLP statute became effective, and were distributed roughly equally between large and small firms. Few elite firms filed during this time period.

LLP filings then tapered off, but began rising again in 2001-2003. Unlike the 1994-1995 filing period, LLP filings during the 2001-2003 period are dominated by the large firms. In particular, a large number of elite law firms filed during this period, roughly coinciding with two events: the Arthur Andersen trial and bankruptcy, and the large numbers of securities fraud suits accompanying the stock market downtown associated with the burst of the dotcom bubble.

[45] "Elite firms" are defined as firms with more than $1 million in profits per partner for 2002.

Given the large numbers of securities offerings on which these firms are involved, and the corresponding liability fears that may result, it thus is unsurprising that many large and elite law firms sought liability protection during this time frame. In addition, our follow-up interviews reveal that both rising liability fears and the Arthur Andersen bankruptcy were salient factors associated with many firms' decisions to opt for LLP status.[46]

LLP filing dates plotted against 2002 per partner profits are graphically depicted in Chart 2.[47] The chart shows a rough bunching of LLP filings that corresponds with per partner profits. As discussed in more detail in Part II, we believe that this is attributable to a concern by firms with the negative signal that may accompany an LLP filing. However, as more firms that the decision-making firm considers to be a competitor convert to LLP status, the negative signal is muted. For this reason, firms tend to file with their cohort. The interview data supports this notion that firms account for the actions of competitor firms when making a decision regarding organizational form.[48]

LLP filing dates plotted against first year associate starting salaries are graphically depicted in Chart 3. [The chart shows a rough bunching of LLP filings that corresponds with first year starting salaries. This confirms the information gleaned from Chart 2: law firms consider a limited number of other firms to be their direct competitors for clients and associates, as exhibited by measures of profits per partner and first year

[46] See infra notes __ and accompanying text (discussing Arthur Andersen and rising liability fears as salient factors in law firms' choice of organizational form).
[47] Because per partner profit data is reported in American Lawyer for only the 200 most profitable firms in the United States, only 36 of our original sample of 146 firms are included on this chart.
[48] See infra notes __ and accompanying text (discussing this phenomenon).

starting salaries. When weighing the costs and benefits of limited liability, firms consider the actions of competitor firms before reaching a decision regarding LLP filing.]

3. Testing the Partnership Theories

a. Profit-Sharing and Illiquidity-Based Theories

In Part I of this Article, we discussed four theories of partnership that are based on the purported benefits of profit sharing through partnership: insurance, monitoring, quality signaling, and preventing grabbing and leaving. In addition, we discussed one partnership theory – mentoring – that relied on the illiquidity benefits of the partnership form. As noted, there are reasons to approach each of these theories with suspicion because, assuming that profit-sharing and illiquidity are valuable attributes in at least some business and professional organizations, the partnership form is unnecessary to provide these benefits. Both profit sharing and illiquidity can be, and frequently are, replicated through a variety of organizational forms, including the LLC, PC, and corporation.

Nonetheless, each of these theories generates a testable hypothesis. If any of these partnership theories are the primary benefit of the partnership form, then all or nearly all of the firms in our sample should be LLPs, because the LLP provides the same illiquidity and profit-sharing features of the GP, without the accompanying costs of unlimited liability. Contrary to the predictions of the illiquidity and profit-sharing based theories of partnership, a sizeable number of firms in our sample remain GPs. Accordingly, we reject all of the partnership theories based on profit-sharing and

illiquidity. This conclusion is reinforced by the information gathered in our follow-up interviews, as discussed in greater detail in Part II.C.

b. Limited Liability, Monitoring, and Collegiality

As discussed in Part I of this Article, several partnership theories rely on the purported benefits of unlimited liability. Under the monitoring theory, unlimited liability induces partners to more carefully scrutinize each other. This monitoring becomes more difficult with increased size, rate of growth, and geographic dispersion of the firm. In contrast, the collegiality theory of partnership asserts that the willingness to face personal liability for a partner's acts generates trust and collegiality within the firm. Larger groups, quickly growing groups, and more geographically dispersed groups are considered less collegial than small, closely-knit groups. Accordingly, the monitoring and collegiality partnership theories each yield a testable hypothesis: if either of these theories are the primary rationale for the choice of organizational form among New York law firms, then regression results should reveal a statistically significant effect of the number of lawyers variable, the number of offices variable, and the rate of growth variable on the choice of organizational form.

In order to test this hypothesis, we estimated a logit model with the dependent discrete variable being whether the firm was an LLP or GP. The independent variables are the number of lawyers at the firm, the number of different firm offices, the rate of firm growth, and whether the firm is domestic or international. As table 3 reports, neither

the number of offices nor the number of lawyers was significant.[49] [results on rate of growth to be added] Given the possibility of a multicollinearity problem between the number of offices and the number of lawyers, we also ran the logit models on each of the two variables separately.[50] As tables 4 and 5 report, once again, neither variable was significant. Although, without using additional independent variables we cannot fully correct for any multicollinearity problem, the initial indications from the data are that neither the monitoring nor the collegiality hypotheses find much support.

The dummy variable for the international firms (Int) was significant in all three models, indicating that international firms were more apt to be GPs.[51] Because of the small number of international firms in the sample, we do not read too much into this result.

Table 3

Logit Estimates Number of obs = 117

Log likelihood = -.49.63211

LLP	Coef	Std. Err	Z	Prob>|z|	[95% Conf. Interval]
Lawyers	5.50e-06	.0013943	0.00	0.997	-.0027273 .0027383
Offices	.0387976	.0900769	0.43	0.667	-.1377498 .215345
Int	-1.853912	.88133331	-2.10	.035	-3.581293 -.1265304

[49] We also ran a probit model, which assumes a slightly different structure. See WILLIAM GREENE, ECONOMETRIC ANALYSIS 814-15 (2d ed 2000). Neither the number of offices nor the number of lawyers was significant in the probit model. As in the logit model, the dummy on international firms was significant.
[50] Dropping one of the variables is a common but imperfect fix for multicollinearity. In addition, this fix introduces the possibility of a specification error, unless the true value of the dropped variable is zero. See PETER KENNEDY, A GUIDE TO ECONOMETRICS 182 (3d ed 1992). --[Add results corrected for heteroskedasticity].
[51] Because this is a logit model, the reported coefficient estimates do not reflect the marginal effects. [Add estimates of marginal effects]

_const	1.607339	.3514404	4.57	0.000	.9185287 2.29615

Table 4

Logit Estimates Number of obs = 117

Log likelihood = -.49.731841

LLP	Coef	Std. Err	Z	Prob>|z|	[95% Conf. Interval]
Lawyers	.0005154	.0009144	0.56	0.573	-.0012768 .0023077
Int	-1.781947	.8609279	-2.07	0.038	-3.469335 -.0945592
_const	1.675591	.3177566	5.27	.000	1.0528 2.298383

Table 5

Logit Estimates Number of obs = 117

Log likelihood = -.49.632118

LLP	Coef	Std. Err	Z	Prob>|z|	[95% Conf. Interval]
Offices	.0390794	.0550242	0.71	0.478	-.068766 .1469249
Int	-1.85443	.8715495	-2.13	0.033	-3.562636 -.1462243
_const	1.607211	.3499274	4.59	.000	.9213658 2.293056

c. Unlimited Liability and Signaling

As discussed in Part I.D.1. of this Article, unlimited liability is thought to send a positive signal to customers by indicating that, because each partner's personal assets are at stake in the event of her own or another partner's blunder, each partner will take more

care in the provision of legal services and will more carefully monitor other firm members. Because the quality signaling theory depends on information asymmetry between the firm and its clients, the signaling theory suggests that firms whose clients posess less information regarding the quality of legal services they receive should have a greater need to engage in this type of quality signaling than firms whose clients are well informed regarding the quality of legal services.

To test this hypothesis, we collected data on the average number of in-house counsel employed by each firm's clients, a factor shown in prior research to correlate with the level of information asymmetry between lawyer and client. To do this, we collected data on each firm's clients from the National Law Journal 250 and information on the number of each client's in-house counsel from *Of Counsel*.[52] To control for the size and sophistication of the client base, we used the total number of Fortune 250 and bank clients of each law firm in the sample.

[add discussion of results]

d. Partnership Penalty

As discussed in Part I.G. of this Article, the partnership penalty theory asserts that the GP legal regime exists primarily as an information-forcing default rule designed to force parties to contract around the burdensome and unattractive GP default rules, thus revealing information to courts and other interested parties. If the partnership penalty theory explains the primary role played by the GP regime, then most or all of the firms in

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[52] See Ryon Lancaster & Brian Uzzi, *From Colleague to Employee: Determinants of Changing Career Governance Structures in Elite U.S. Law Firms* (working draft on file with author) (using this same variable to test the level of information asymmetries in the market for legal services).

our sample should have abandoned that regime when given the opportunity by opting for LLP status.

Our data indicate that most firms have, in fact, abandoned the GP regime and our follow-up interviews with law firm partners whose firms are represented in our study indicate that the rest may at some point in time follow suit. The asserted reasons for each firm's choice of organizational form are telling and indicate that, for many partners, the perceived benefits of unlimited liability are real. At the same time, however, the interviews indicate that this view is changing, particularly among younger partners, and that most of those interviewed believe that full movement into the LLP form is inevitable. If this is true, then the New York law firm market has not yet reached equilibrium, leading to two questions: (1) why has full movement into the LLP form been so slow? and (2) why have some firms moved relatively quickly, while others have taken their time?

Economists have developed a number of theories to explain both the speed with which markets adjust to a new standard and why some market participants are willing to be leaders in the move to a new standard while others merely follow the pack.

[Kim – add section on market equilibrium here]

C. Interview Data

We sought clarification and confirmation of the implications of our empirical results through a series of interviews with individuals active in and knowledgeable about the choice of organizational form by New York law firms. Specifically, we interviewed: (1) partners at law firms in our sample who had been involved in their firm's decision

regarding organizational form; (2) legal consultants, who advise law firms on a variety of matters, including the choice of organizational form; and (3) insurers, who base malpractice liability insurance rates on a variety of factors thought to correlate with the probability of a malpractice judgment and, thus, collect data from law firms regarding those factors.

1. Law Firm Partners

In order to shed light on the results of our empirical analysis, we interviewed partners at many of the law firms in our sample. We interviewed partners at many firms across a range of sizes and practice areas that had opted for LLP status. More importantly, we interviewed at least one partner at every law firm in our sample that had chosen to remain a GP.

Although the explanations offered for the choice to remain a GP vary across firms and law firm cultures are undoubtedly idiosyncratic, several general themes arose from our discussions with law firm partners. First, inertia or lack of attention to the costs and benefits of LLP status did not seem to explain the choice of organizational form in *any* of the firms in our sample. Second, many partners that we interviewed indicated a belief that the ultimate movement of law firms to limited liability forms was inevitable, providing support for the partnership penalty analysis. This was true even among many partners at firms that had decided to remain a GP, at least temporarily.

Third, intra-firm economics had caused some firms to struggle with the move to a limited liability entity. This was true even among several firms who eventually were able to overcome that struggle and file for LLP status. Fourth, many law firm partners opposed to limited liability for law firms fear that limited liability will undermine firm

collegiality. Fifth, many law firm partners opposed to their firm's move to a limited liability entity fear that limited liability will send a negative signal to customers. Sixth, many law firms that had switched to LLP status during recent years or that were currently debating such a move cited the "Arthur Andersen effect." Seventh, partners at firms that had chosen LLP status did not mention profit sharing or illiquidity as rationales for their firms' choice, further undermining partnership theories based on these rationales. Finally, some law firm partners cited the size, decentralization, and specialization of modern law firms as relevant factors motivating the decision to become an LLP.

a. Ruling out inertia and lack of sophistication

It is worth noting at the outset that neither inertia nor lack of sophistication can explain the lack of movement into LLPs by some New York law firms. As is evident from the many large and successful firms listed in Appendix A as a GP, partners at the GP firms are quite sophisticated. Our interview data reveals that, in these firms, the partners have debated (and rejected) LLP status. The existence of the debate reveals that: (1) partners know about LLP status, and (2) the LLP is not the preferred choice for every partner. At least some partners perceive costs as well as benefits to the LLP form.

b. The partnership penalty

Despite the ongoing debate within many law firms regarding the choice of organizational form, the interview data reveal a feeling among many law firm partners that those partners pushing to remain a GP may some day lose the intra-firm debate. At that time, the remaining GP firms -- like most of their competitors -- will opt for a limited liability form of some sort.

These statements lend support to the partnership penalty theory developed in Part I of this Article. At the same time, however, the fact that many law firm partners have aggressively pushed to remain a GP indicates that, at least for many law firm partners, the benefits of unlimited liability are real, a phenomenon explored in subparts d-e of this section.

c. Intra-firm economics

Our interviews revealed that intra-firm economics had caused some of the law firms in our sample to struggle with the move to a limited liability vehicle, even in cases where the firm was eventually able to overcome those issues and adopt the LLP form. According to some partners we interviewed, problems with renegotiating the division of profits within the firm before moving to a limited liability entity caused negotiations over the move to LLP status to stall.

Although LLP law permits partners to use their old GP agreement without modification to govern their relationship once they become an LLP, at least some firms feel that modification is necessary. This is because the GP form requires partners to share all profits and all liability risks, despite the fact that some partners are in high-risk, high-return practice areas. Presumably, GP agreements are premised on the notion that such high-risk, high return partners are willing to give up some portion of those returns, in exchange for the opportunity to share the risk of personal liability with all firm partners.

Once a firm adopts limited liability status, however, partners are no longer sharing the risk of personal liability for the acts of fellow partners. As such, some high-risk, high-return partners expect to receive a greater share of the division of firm profits if the

firm becomes an LLP. Debates over whether and how much more some partners would receive under an LLP form and how much other partners would, in turn, be forced to give up caused some law firms to struggle with the move to LLP form, in some cases for as long as a year or two.[53]

d. Collegiality

Our interviews with law firm partners revealed that many partners, particularly older partners, greatly feared that the move by law firms to limited liability entities would undermine the trust and collegiality that partners traditionally shared.[54]

[expand]

e. Signalling

Our interviews with law firm partners revealed that many partners feared the negative signal that any limitation on personal liability might send to their clients and competitors. This was particularly true when very few of the firm's competitor firms had opted to limit their liability. As stated by one law firm partner, "at the time we first debated becoming an LLP, none of the firms that we consider similar to us had limited their liability. We didn't want to be path breakers on this."[55]

At the same time, as more firms within a given cohort opt for LLP status, the perceived negative signal associated with limited liability diminishes, and the arguments

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[53] Confidential interviews with law firm partners (transcripts on file with author). See also, Anthony Lin, *After Enron, Firms Rethink Partnership*, N.Y.L.J. (April 15, 2002) at 1 (quoting Kenneth J. Laverriere, a Sherman & Sterling partner involved in the organizational form decision, as stating that Sherman's negotiations over the move to LLP status took several months or longer, in part because of concerns over the division of profits under the LLP structure when some partners were in high-risk, high-return practice areas.)

[54] Confidential interviews with law firm partners (transcripts on file with author). See also, Lin, supra note 53 (quoting an unnamed partner at a major New York law firm as stating that his firm deadlocked over the decision of whether to become an LLP because of the "tremendous fear that the partnership would lose its collegiality.")

[55] Confidential interview with law firm partner (transcript on file with author).

in favor of limited liability are more persuasive. As stated by one partner, "we're currently reconsidering the issue and my prediction is that we'll switch [to an LLP] at some point in the near future. Now that most of the other firms like us have switched, the arguments against it seem weaker."[56]

f. The Arthur Andersen Effect

In our interviews with partners at firms that had recently chosen to limit their liability or were currently considering whether to do so, one factor was mentioned repeatedly as being relevant to the firm's decision: the demise of Arthur Andersen.[57] This was especially true at large, elite law firms, many of whom only opted for LLP status after 2001. Apparently, for many of these firms, the threat of a liability judgment that exceeded the firm's malpractice insurance seemed relatively remote.[58] Given the perceived losses associated with limited liability, many firms simply felt that the benefits of LLP status were insufficient to overcome the costs. For many firms, however, this perception changed with the trial and subsequent bankruptcy of Arthur Andersen. Suddenly, the possibility of a liability judgment that would not only exhaust the firm's liability insurance, but its partners' personal assets as well, seemed very real. Apparently, the fact that a firm as large and reputable as Arthur Andersen could simply

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[56] Confidential interview with law firm partner (transcript on file with author).
[57] Confidential interviews with law firm partners (transcripts on file with author). See also, Lin, supra note 53 (noting that, "[i]n light of the potentially crippling liability faced by Arthur Andersen, Vinson & Elkins, and Kirkland & Ellis for their roles in the collapse of Enron Corp., major law firms are considering again whether to form themselves into limited liability partnerships.")
[58] Confidential interviews with law firm partners (transcripts on file with author). See also, Lin, supra note 53 (quoting Ward Bower, a principal at the law firm consultancy Altman Weil, as saying that, prior to Enron, many law firms assumed that malpractice was an insurable risk, but that "you can't insure againt 10-figure liability.")

disintegrate was a sobering experience for many law firm partners, and one that changed their outlook on limited liability.

g. Ruling out profit sharing and illiquidity rationales

As discussed in Part I of this Article, several partnership theories rely on profit sharing and illiquidity rationales to explain the benefits of the partnership form. As noted in Part II.B.3.a. of this Article, the sizeable number of LLP firms in our sample undermines these theories. This empirical finding is buttressed by our interview data.

If profit sharing or illiquidity are the primary benefits of the partnership form, then most firms should have readily switched to the LLP form in order to capture those benefits without the accompanying costs of unlimited liability. Accordingly, for those firms that have opted for LLP status, the decision to switch should have been largely uncontroversial among firm members and the debate, if any, accompanying the change should have focused on the costs and benefits of profit sharing or illiquidity.

According to the LLP partners in our sample, however, this was not the case. Instead, at most firms, the decision to alter the firm's organizational form was a difficult and, in some cases, contentious one. In addition, the accompanying debates largely focused on the costs and benefits of limited liability, not on profit sharing or illiquidity.

h. *Size, Specialization, and Decentralization*

Although neither the number of lawyers variable nor the number of offices variable were significant predictors of the choice of organizational form in our logit regression,[59] law firm partners frequently cite the increasing size, decentralization, and specialization of the modern law firm as a factor impacting the choice to limit the

[59] See infra notes __ and accompanying text.

partners' personal liability. To many partners, the notion that a trust and estate partner in Texas could or would more carefully monitor a bankruptcy partner in New York simply because of personal liability fears is absurd, given the realities of modern law firm life.[60]

i. Summary

As noted by law firm partners, no single factor is a determinant of the choice of organizational form.[61] Instead, as stated by many partners, a "confluence" of events has dictated the decision. Those events include the number of similarly situated firms that have chosen to become LLPs, rising liability fears associated with Arthur Andersen, larger transaction sizes, more frequent malpractice awards, the failure of malpractice insurance to keep pace with these risks, and the intricacies of internal firm economics and culture.[62]

2. <u>Law Firm Consultants</u>

Law firm consultants work for consultancy firms that advise law firms on a variety of matters relating to law firm structure, operation, and profitability, including the choice of organizational form. Our interviews with law firm consultants reinforced the information gathered through interviews with law firm partners and provided some new insights as well.

[add info from interviews]

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[60] Confidential interview with law firm partner (transcript on file with author). See also, 80 ABA J. 54, 56 (Sept. 1994) (quoting Robert R. Keatinge, Chair of the ABA Business Law Section Partnership Committee's Subcommittee on Limited Liability Companies, as stating "[w]hen you think about it, there is nothing I as a tax lawyer can do that will protect against someone from another department within the firm screwing up a water law issue.")
[61] Confidential interviews with law firm partners (transcripts on file with author).
[62] Confidential interviews with law firm partners (transcripts on file with author).

3. Law Firm Insurers

Insurance companies insure business and professional enterprises, including law firms, against a variety of risks, including the risk of liability arising from legal advice rendered to clients. In determining what rates to charge law firms for such insurance, insurance companies consider a variety of factors that are thought to correlate with an increased risk of such liability.

If the theories proposed by economists and legal scholars that assert that unlimited liability results in the provision of higher-quality legal services are true, then insurance companies should charge GPs lower premiums than LLPs, in order to reflect the decreased risk of liability among GP firms.[63] In other words, if unlimited liability really causes partners to better monitor each other, then that reduced liability risk should be reflected in lower insurance rates.

Our interviews with law firm insurers reveal that insurance companies do not consider organizational form in setting liability insurance premiums.[64] Accordingly, insurance companies apparently do not believe that unlimited liability causes law firms to render higher quality legal services. Unless insurance companies have erred in their actuarial calculations or have failed to consider the possible connection between

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[63] This is in contrast to theories such as signaling, which predict higher profitability but not a lower liability risk, and profit-sharing, which predicts higher per partner profitability, but not a better product.

[64] Interview with insurer (transcript on file with author). See also Jett Hanna, *Legal Malpractice Insurance and Limited Liability Entities: An Analysis of Malpractice Risk and Underwriting Responses*, 39 S. TEX. L. REV. 641, 645 (1998) (stating that, "[o]nly if the insurer provides coverage for prior affiliations of the attorney constituents of a limited liability entity will there conceivably be a reduced incident of loss as a result of limited liability status")**;** Robert W. Hillman, *The Impact of Partnership Law on the Legal Profession*, 67 FORDHAM L. REV. 393, 409 (1999) (noting that "LLP status does not reduce the liability of the partnership itself, which means the need for insurance underwriters to insist on implementation of monitoring mechanisms is largely unaffected by conversion of a firm from a general partnership into an LLP").

organizational form and liability risk, then this fact undermines the economic theories asserting that unlimited liability results in a better legal product.

III. CONCLUSION: EXPLAINING THE NEW YORK LAW FIRM MARKET

In today's litigious age, legal practitioners are correct to express concerns with the costs associated with liability, including liability for legal malpractice. Malpractice actions against law firms are increasingly common and judgments are becoming larger.[65] In addition, malpractice insurance is more expensive, covers less, and by all accounts has not kept pace with the increased liability risks associated with larger transaction sizes and volatile markets.[66] This is particularly true in high-risk legal fields, such as banking, securities, and other heavily regulated industries.[67] As a result, it is not uncommon today to see law firm bankruptcies or law firm partners who incur personal liability as a result of malpractice judgments or other law firm debts.[68]

However, an analysis of the empirical and interview data collected for this Article indicates that, at least with respect to New York law firms, the costs and benefits of limited liability are far more complicated than either the academics or legal practitioners would like to believe. The rapid movement of firms into the LLP structure and the failure of the empirical tests in Part II of this Article to return the results predicted by

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[65] Jennifer J. Johnson, *Limited Liability for Lawyers: General Partners Need Not Apply*, 51 BUS. LAW. 85, 87 (Nov. 1995); Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Little Secret,* 47 VAND. L. REV. 1657, 1674-80 and App. B & D (1994) (demonstrating that malpractice claims have sharply increased). [add more current sources confirming trend]

[66] Johnson, supra note 65 at 88; Rita Henley Jensen, *For Third Straight Year Malpractice Rates Rise Again,* NAT'L. L. J. 3 (Apr. 12, 1993); [add more current sources.] See also, infra notes __ and accompanying text (discussing insurance coverage and rates with law firm partners) and note __ and accompanying text (discussing insurance coverage and rates with malpractice liability insurers).

[67] Johnson, supra note 65 at 88.

[68] Coates, Cal. L. Rev. (listing law firm bankruptcies); Johnson at 88-89.

existing partnership theories cast doubt on arguments that the unlimited liability of the GP form provides the unqualified benefits asserted by many researchers. At the same time, the fact that a substantial number of large and sophisticated law firms have opted to remain a GP despite the availability of a quick, cheap, and hassle-free alternative undermines the arguments of legal practitioners who suggest that the GP form provides no benefits to those considering the formation of a business or professional enterprise.

Under the illiquidity-based, profit-sharing-based, and penalty default theories of partnership form, one should observe the LLP as the dominant, if not exclusive, choice of form for New York law firms. This is, in fact, what we observe in the data -- the number of LLPs within our sample exceeds the number of GPs by a wide margin and our follow-up interviews suggest that the remaining GPs may opt to limit their liability at some point in the near future. This empirical data alone would not allow us to prefer the penalty default theory over these competing theories.

Two additional factors, however, increase our confidence in the penalty default theory relative to illiquidity and profit-sharing based theories. First, as discussed in Part I of this Article, the analytic basis for those theories is extraordinarily weak. Second, our interview data overwhelmingly favors the penalty default theory over the illiquidity and profit–sharing theories. During those interviews, law firm partners repeatedly stressed the costs (and benefits) associated with limited liability. None of the LLP partners, by contrast, mentioned illiquidity or profit-sharing as benefits of the partnership form that could be just as easily attained through either the GP or LLP.

Although we believe that our data generally supports the penalty hypothesis, the organizational form story, nonetheless, seems more complicated than a simple

information-forcing default rule hypothesis would suggest. Specifically, both the data on filing patterns and our interviews with law firm partners and consultants indicate a number of factors affecting the choice of organizational form. First, law firms consider a limited number of other firms to be their competitors for clients and new associates. Second, law firm partners believe that clients consider the firm's organizational form when making decisions about the quality of the firm and attach a negative signal to a firm's decision to limit its partners' personal liability. However, as the number of firms within a given cohort that choose to limit their liability increases, the perceived stigma associated with limited liability status decreases. As a result, firms look to their cohort's decisions regarding organizational form when making their own decisions regarding the choice of organizational form.

Appendix A: Large Firms

FIRM	# LAWYERS	# OFFICES	MAJOR PRACTICE	TYPE	Filing Date	International/Domestic	02 Profits Per Partner
Kenyon & Kenyon	198	3	Intellectual Property Practice.	GP		Domestic	$770,000
Cleary Gottlieb Steen	798	12	Antitrust, Banking and Financial	GP		Domestic	$1,445,000
Davis Polk &	624	9	Corporate, Antitrust, Capital	GP		Domestic	$1,775,000
Wachtell Lipton Rosen	181	1	General Practice, Mergers and	GP		Domestic	$2,920,000
D'Amato & Lynch	84	2	General Practice. Corporation,	GP		Domestic	
Fischbein Badillo	79	3	General Practice. Litigation in	GP		Domestic	
Fish & Neave	173	3	Intellectual Property including	GP		Domestic	$800,000
Fitzpatrick Cella	142	3	Intellectual Property Practice.	GP		Domestic	
Gianni Origoni Grippo	270	7	M&A, Corporate, Capital	GP		International	
Mound Cotton Wollan	73	5	General Practice, Insurance and	GP		Domestic	
Salans	400	14	Antitrust & Trade Regulation,	GP		International	
Watson Farley &	220	7	General International Practice,	GP		International	
LeBoeuf Lamb Greene	650	22	General Practice including	LLP	10/24/94	Domestic	$855,000
Wolf Haldenstein	55	5	Corporate and Securities, Estate	LLP	11/16/94	Domestic	
Morgan & Finnegan	98	2	Patent and Technology-related	LLP	12/19/94	Domestic	
Morrison Cohen	83	1	General Trial and Appellate	LLP	12/23/94	Domestic	
Herrick Feinstein LLP	124	3	LITIGATION: Commercial,	LLP	12/27/94	Domestic	
Patterson, Belknap,	181	1	General Practice	LLP	12/30/94	Domestic	$730,000
Emmet Marvin &	62	3	General Practice, including	LLP	12/30/94	Domestic	
Satterlee Stephens	58	2	General Practice	LLP	12/30/94	Domestic	
Aaronson Rappaport	58	2	Medical Malpractice Defense,	LLP	01/03/95	Domestic	
Proskauer Rose LLP	600	7	General Practice Labor &	LLP	01/26/95	Domestic	$1,025,000
Kronish Lieb Weiner	101	1	Antitrust, Banking, Bankruptcy	LLP	03/01/95	Domestic	
Kasowitz Benson	150	5	Commercial Litigation, Complex	LLP	03/14/95	Domestic	
Ohrenstein & Brown	56	3	Civil Litigation, Corporate,	LLP	04/27/95	Domestic	
Phillips Nizer LLP	78	3	Corporate and Business Law,	LLP	05/11/95	Domestic	
Brown Raysman	220	5	General Practice. Computer,	LLP	05/24/95	Domestic	$530,000
Moses & Singer LLP	65	2	Advertising, Asset Protection,	LLP	05/24/95	Domestic	
Olshan Grundman	54	2	Corporation, Securities	LLP	07/10/95	Domestic	
Chadbourne & Parke	428	9	Arbitration, Antitrust and Trade	LLP	08/08/95	Domestic	$1,000,000
Morris Duffy Alonso	80	1	General Trials and Appeals in all	LLP	09/06/95	Domestic	
Mendes & Mount LLP	160	3	General Practice. Insurance and	LLP	12/11/95	Domestic	
Weil Gotshal &	1000	17	Advertising,	LLP	12/18/95	Domestic	$1,300,000
Kaye Scholer LLP	400	9	ADR, Antitrust and Trade	LLP	12/29/95	Domestic	$980,000
Kelley Drye & Warren	305	8	Commercial Litigation,	LLP	05/09/96	Domestic	$810,000
Hughes Hubbard &	303	7	General Practice.	LLP	05/14/96	Domestic	$820,000
Schulte Roth & Zabel	300	2	General Practice. Corporate,	LLP	08/23/96	Domestic	$1,090,000
Thelen Reid & Priest	408	6	General and International	LLP	11/19/96	Domestic	$510,000
Stroock & Stroock &	345	3	Bankruptcy Litigation;	LLP	01/24/97	Domestic	$800,000
Frommer Lawrence &	52	2	Intellectual Property Law,	LLP	09/02/97	Domestic	
Dewey Ballantine LLP	550	13	Antitrust and Trade Regulation,	LLP	09/26/97	Domestic	$1,125,000
White & Case LLP	1700	37	General Practice	LLP	12/29/97	Domestic	$935,000
Clifford Chance US	3500	32	General Practice	LLP	01/28/98	Domestic	
Wilson, Elser,	225	18	full service international law	LLP	02/26/98	Domestic	$605,000
Davis & Gilbert, LLP	84	1	Corporate, Mergers and	LLP	03/10/98	Domestic	
Pryor Cashman	125	1	General Practice	LLP	03/27/98	Domestic	
Condon & Forsyth	51	3	Civil and Commerical Litigation.	LLP	05/07/98	Domestic	
Kramer Levin Naftalis	260	2	General Practice. Corporate	LLP	10/23/98	Domestic	$935,000
Heidell Pittoni	64	2	Trial and Appellate Practice in	LLP	12/15/98	Domestic	
Seward & Kissel LLP	115	2	General Practice including	LLP	01/26/99	Domestic	
Milbank Tweed	496	9	General Practice.	LLP	02/01/99	Domestic	$1,785,000
Lester Schwab Katz &	65	2	General Practice. Trials,	LLP	06/16/99	Domestic	
Curtis Mallet-Prevost	156	10	General Practice, including the	LLP	07/28/99	Domestic	
Windels Marx Lane &	100	5	corporate, banking, litigation,	LLP	12/22/99	Domestic	
Skadden Arps Slate	1750	22	General Practice	LLP	05/25/01	Domestic	$1,605,000
Coudert Brothers LLP	630	29	Antitrust; Arbitration; Banking	LLP	09/05/01	Domestic	$475,000
Torys, LLP	280	2	General Practice	LLP	11/30/01	International	

FIRM	# LAWYERS	# OFFICES	MAJOR PRACTICE	TYPE	Filing Date	International/Domestic	02 Profits Per Partner
Martin Clearwater &	70	3	Litigation and Appellate Practice	LLP	10/17/02	Domestic	
Carter Ledyard &	118	3	General Practice	LLP	11/14/02	Domestic	
Sullivan & Cromwell	661	12	General Practice	LLP	12/20/02	Domestic	$1,720,000
Paul Weiss Rifkind	500	7	Antitrust, Arbitration and	LLP	12/23/02	Domestic	$1,740,000
Richards Spears Kibbe	55	2	Corporate Law Securities Law	LLP	12/31/02	Domestic	
Cadwalader	411	4	Capital Markets, Securitization,	LLP	02/26/03	Domestic	$1,250,000
Kaufman Borgeest &	67	5	Professional Liability Defense	LLP	03/14/03	Domestic	
Cravath Swaine &	499	2	General Practice	LLP	03/25/03	Domestic	$1,960,000
Cahill Gordon &	225	3	General Practice	LLP	04/29/03	Domestic	$1,845,000
Simpson Thacher &	602	6	General Practice	LLP	05/23/03	Domestic	$1,845,000
Shearman & Sterling	697	18	General Practice	LLP	06/16/03	Domestic	$1,275,000
Willkie Farr &	507	8	General Practice	LLP	08/29/03	Domestic	$1,295,000
Thacher Proffitt &	191	5	Admiralty and Maritime,	LLP	09/02/03	Domestic	$640,000
Hawkins Delafield &	111	7	Public Finance, Public Law,	LLP	12/18/03	Domestic	
Fried Frank Harris	550	5	General Practice. Antitrust,	LLP	12/23/03	Domestic	$930,000
Debevoise & Plimpton	514	8	Advertising and Marketing,	LLP	12/30/03	Domestic	$1,085,000
Otterbourg Steindler	58	1	General Practice. Trials and	PC	06/09/70	Domestic	
Herzfeld & Rubin PC	100	6	General Practice. Corporate and	PC	09/29/71	Domestic	
Anderson Kill &	121	6	General Practice (U.S. and	PC	05/04/73	Domestic	
Darby & Darby	73	2	Intellectual Property and	PC	12/27/73	Domestic	
Epstein Becker &	355	12	Labor and Employment, Health,	PC	06/23/80	Domestic	$505,000

Appendix B: Small Firms

FIRM	# LAWYERS	# OFFICES	MAJOR PRACTICE	TYPE	Filing Date	International/Domestic
Abelman Frayne &	29	1	Patent, Trademark, Copyright and Unfair	GP		Domestic
Barnes, Richardson &	27	3	Customs and International Trade Law,	GP		Domestic
Barry, McTiernan &	30	3	Trials and Appeals. Insurance, Civil and	GP		Domestic
Goldfarb & Fleece	26	1	Real Estate, Probate and Trust Law.	GP		Domestic
Graubard Miller	28	1	General Practice.	GP		Domestic
Jacobowitz, Garfinkel &	32	1	Construction Liability, Professional	GP		Domestic
Nicoletti Hornig Campise	28	2	Admiralty, Inland Marine, Aviation,	GP		Domestic
Davidson, Davidson &	26	2	Intellectual Property Practice, Patents,	LLC	04/01/98	Domestic
Afridi & Angell LLC	30	6	Banking and financial services,Corporate &	LLC	07/01/02	International
Goodkind Labaton Rudoff	46	2	General Practice. Corporate, Securities,	LLP	10/26/94	Domestic
Roberts & Holland LLP	40	2	Federal, State and International Tax Practice,	LLP	11/09/94	Domestic
McLaughlin & Stern, LLP	47	2	General Practice, Corporate, Taxation, Civil	LLP	11/15/94	Domestic
Flemming, Zulack &	28	2	General Civil Practice, Litigation, Trials and	LLP	11/23/94	Domestic
Gibney, Anthony &	34	4	General Practice. Corporate and Commercial	LLP	11/30/94	International
Wachtel & Masyr, LLP	34	1	International, Corporate, Tax, Securities and	LLP	12/13/94	Domestic
Davidoff, Malito and	42	4	General and Federal Practice. Banking,	LLP	12/22/94	Domestic
Brauner Baron	28	1	General Practice. Corporate, Tax, Securities,	LLP	12/23/94	Domestic
Cooper & Dunham LLP	38	1	Intellectual and Industrial Property Law	LLP	12/28/94	Domestic
Kurzman Eisenberg	27	2	General Practice. Trusts and Estates, Estate	LLP	02/14/95	Domestic
Ford Marrin Esposito	27	2	General Practice, Litigation, Corporate,	LLP	03/02/95	Domestic
Warshaw Burstein Cohen	34	1	General Practice, including Commercial,	LLP	03/02/95	Domestic
Grunfeld, Desiderio,	32	4	Customs Law, International Trade Law,	LLP	03/16/95	Domestic
Friedman Kaplan Seiler &	47	2	Complex and Multi-District Litigation,	LLP	04/13/95	Domestic
Hahn & Hessen LLP	48	2	General Practice. Business Reorganization	LLP	05/23/95	Domestic
Ostrolenk, Faber, Gerb &	28	2	Patent, Trademark, Copyright and Unfair	LLP	06/08/95	Domestic
Tannenbaum Helpern	46	2	General Commercial Practice. Litigation,	LLP	06/13/95	Domestic
Bernstein Litowitz Berger	34	4	Commercial Litigation including Securities,	LLP	09/28/95	Domestic
Sabin, Bermant & Gould	36	1	General Corporate Practice. Media Law,	LLP	12/20/95	Domestic
Kopff, Nardelli & Dopf	28	1	Insurance Defense, Personal Injury, Medical	LLP	07/24/96	Domestic

Healy & Baillie, LLP	27	3	Admiralty, Corporate, Insurance, Reinsurance	LLP	08/22/96	Domestic
Goldberg Weprin & Ustin	27	1	Real Estate and Ad Valorem Tax Law	LLP	11/21/96	Domestic
Wormser, Kiely, Galef &	36	2	General Practice.	LLP	02/05/97	Domestic
Esanu Katsky Korins &	33	1	General Practice. Corporate, Securities,	LLP	07/18/97	Domestic
Dreier LLP	28	1	Trials and Appeals in all Federal and State	LLP	10/17/97	Domestic
Sokolow, Dunaud,	38	4	International and French General Practice.	LLP	02/03/98	Domestic
Wollmuth Maher &	26	2	General Corporate and Commercial Law,	LLP	03/31/98	Domestic
Putney, Twombly, Hall &	29	4	Labor and Employment Relations and	LLP	12/04/98	Domestic
Zeichner Ellman &	27	3	General Civil Practice. Banking, Corporate,	LLP	04/26/99	Domestic
London Fischer LLP	50	2	Trial and Appellate Practice in all State and	LLP	05/11/99	Domestic
Cohen, Weiss and Simon	31	1	Labor Law, ERISA, Employee Pension and	LLP	12/02/99	Domestic
White, Fleischner & Fino	30	3	Automobile and Trucking, General Liability,	LLP	11/09/00	Domestic
Pavia & Harcourt LLP	34	4	General Practice. Corporate, Corporate	LLP	07/30/01	International
Eaton & Van Winkle LLP	27	2	Banking, Bankruptcy, Workout and	LLP	09/04/02	Domestic
Amster, Rothstein, &	43	1	Patent, Trademark, Copyright and Unfair	LLP	05/19/03	Domestic
Golenbock Eiseman Assor	35	1	General Practice. Civil Litigation. Corporate,	LLP	08/29/03	Domestic
Ladas & Parry	50	5	Patent, Trademark, Copyright, Entertainment,	LLP	11/21/03	Domestic
Conway, Farrell, Curtin &	38	3	Insurance Defense, Real Estate, Construction	PC	01/05/71	Domestic
Kane Kessler, P.C.	32	2	General Practice. Corporate, Commercial,	PC	02/01/71	Domestic
Quirk and Bakalor, P.C.	29	2	Catastrophic Injury Litigation, Trial Practice,	PC	09/14/71	Domestic
Robinson Brog Leinwand	50	1	General Practice. Trials and Appeals in all	PC	02/14/72	Domestic
Cowan, Liebowitz &	50	1	General Practice. General Civil, Intellectual	PC	12/01/72	Domestic
Sullivan Papain Block	35	3	General Litigation including Negligence,	PC	09/23/74	Domestic
Grubman Indursky	30	1	Entertainment, Music and Records, Motion	PC	10/01/74	Domestic
Newman Fitch Altheim	41	2	Trial and Appellate Practice, Commercial,	PC	06/25/75	Domestic
Kleinberg, Kaplan, Wolff	26	2	General Practice, Corporate Law, Securities,	PC	10/27/75	Domestic
Rosenberg & Estis, P.C.	36	1	Real Estate and Commercial Litigation,	PC	06/02/76	Domestic
McAloon & Friedman,	37	1	Medical Malpractice, General Practice.	PC	10/07/77	Domestic
Bivona & Cohen, P.C.	37	5	General Civil Litigation and Trial Practice,	PC	01/10/79	Domestic
Gordon & Silber, P.C.	29	2	Professional Liability, Medical Malpractice,	PC	07/03/79	Domestic
Morvillo, Abramowitz,	38	1	Civil and Criminal Litigation in Federal and	PC	09/06/79	Domestic
Borah, Goldstein,	45	1	All forms of residential and commercial	PC	11/14/79	Domestic
Snow Becker Krauss P.C.	26	1	Corporate and Securities, Blue Sky, SEC,	PC	02/21/80	Domestic
Frankfurt Kurnit Klein &	41	1	General practice with a focus on media,	PC	09/24/80	Domestic
Fross Zelnick Lehrman &	49	1	U.S. and International Trademark, Copyright,	PC	04/02/82	Domestic
Smith Mazure Director	32	1	Insurance Defense, Toxic Tort Defense,	PC	12/09/88	Domestic
Weitz & Luxenberg, PC	45	4	Personal Injury, Toxic Torts, Asbestos,	PC	02/01/91	Domestic
Landman Corsi Ballaine	46	3	Products, Toxic Tort, Railroad and General	PC	09/18/95	Domestic
Jones Hirsch Connors &	50	5	Insurance Defense and Litigation.	PC	01/29/97	Domestic
FIRM	# LAWYERS	# OFFICES	MAJOR PRACTICE	TYPE	Filing Date	International/Domestic

Appendix C: AM Law 200

FIRM	# LAWYERS	# OFFICES	MAJOR PRACTICE	TYPE	Filing Date	International/ Domestic	02 Profits Per Partner
Coudert Brothers LLP	630	29	Antitrust; Arbitration;	LLP	09/05/0	Domestic	$475,000
Epstein Becker & Green PC	355	12	Labor and Employment,	PC	06/23/8	Domestic	$505,000
Thelen Reid & Priest LLP	408	6	General and International	LLP	11/19/9	Domestic	$510,000
Brown Raysman Millstein Felder &	220	5	General Practice.	LLP	05/24/9	Domestic	$530,000
Wilson, Elser, Moskowitz,	225	18	full service international	LLP	02/26/9	Domestic	$605,000
Thacher Proffitt & Wood LLP	191	5	Admiralty and Maritime,	LLP	09/02/0	Domestic	$640,000
Patterson, Belknap, Webb & Tyler	181	1	General Practice	LLP	12/30/9	Domestic	$730,000
Kenyon & Kenyon	198	3	Intellectual Property	GP		Domestic	$770,000
Fish & Neave	173	3	Intellectual Property	GP		Domestic	$800,000
Stroock & Stroock & Lavan LLP	345	3	Bankruptcy Litigation;	LLP	01/24/9	Domestic	$800,000
Kelley Drye & Warren LLP	305	8	Commercial Litigation,	LLP	05/09/9	Domestic	$810,000
Hughes Hubbard & Reed LLP	303	7	General Practice.	LLP	05/14/9	Domestic	$820,000
LeBoeuf Lamb Greene & Macrae	650	22	General Practice including	LLP	10/24/9	Domestic	$855,000
Fried Frank Harris Shriver &	550	5	General Practice. Antitrust,	LLP	12/23/0	Domestic	$930,000
White & Case LLP	1700	37	General Practice	LLP	12/29/9	Domestic	$935,000
Kramer Levin Naftalis & Frankel	260	2	General Practice.	LLP	10/23/9	Domestic	$935,000
Kaye Scholer LLP	400	9	ADR, Antitrust and Trade	LLP	12/29/9	Domestic	$980,000
Chadbourne & Parke LLP	428	9	Arbitration, Antitrust and	LLP	08/08/9	Domestic	$1,000,000
Proskauer Rose LLP	600	7	General Practice Labor &	LLP	01/26/9	Domestic	$1,025,000
Debevoise & Plimpton LLP	514	8	Advertising and	LLP	12/30/0	Domestic	$1,085,000
Schulte Roth & Zabel LLP	300	2	General Practice.	LLP	08/23/9	Domestic	$1,090,000
Dewey Ballantine LLP	550	13	Antitrust and Trade	LLP	09/26/9	Domestic	$1,125,000
Cadwalader Wickersham & Taft	411	4	Capital Markets,	LLP	02/26/0	Domestic	$1,250,000
Shearman & Sterling LLP	697	18	General Practice	LLP	06/16/0	Domestic	$1,275,000
Willkie Farr & Gallagher LLP	507	8	General Practice	LLP	08/29/0	Domestic	$1,295,000
Weil Gotshal & Manges LLP	1000	17	Advertising,	LLP	12/18/9	Domestic	$1,300,000
Cleary Gottlieb Steen & Hamilton	798	12	Antitrust, Banking and	GP		Domestic	$1,445,000
Skadden Arps Slate Meagher &	1750	22	General Practice	LLP	05/25/0	Domestic	$1,605,000
Sullivan & Cromwell LLP	661	12	General Practice	LLP	12/20/0	Domestic	$1,720,000
Paul Weiss Rifkind Wharton &	500	7	Antitrust, Arbitration and	LLP	12/23/0	Domestic	$1,740,000
Davis Polk & Wardwell	624	9	Corporate, Antitrust,	GP		Domestic	$1,775,000
Milbank Tweed Hadley & McCloy	496	9	General Practice.	LLP	02/01/9	Domestic	$1,785,000
Cahill Gordon & Reindel LLP	225	3	General Practice	LLP	04/29/0	Domestic	$1,845,000
Simpson Thacher & Bartlett LLP	602	6	General Practice	LLP	05/23/0	Domestic	$1,845,000
Cravath Swaine & Moore LLP	499	2	General Practice	LLP	03/25/0	Domestic	$1,960,000
Wachtell Lipton Rosen & Katz	181	1	General Practice, Mergers	GP		Domestic	$2,920,000

Chart 1

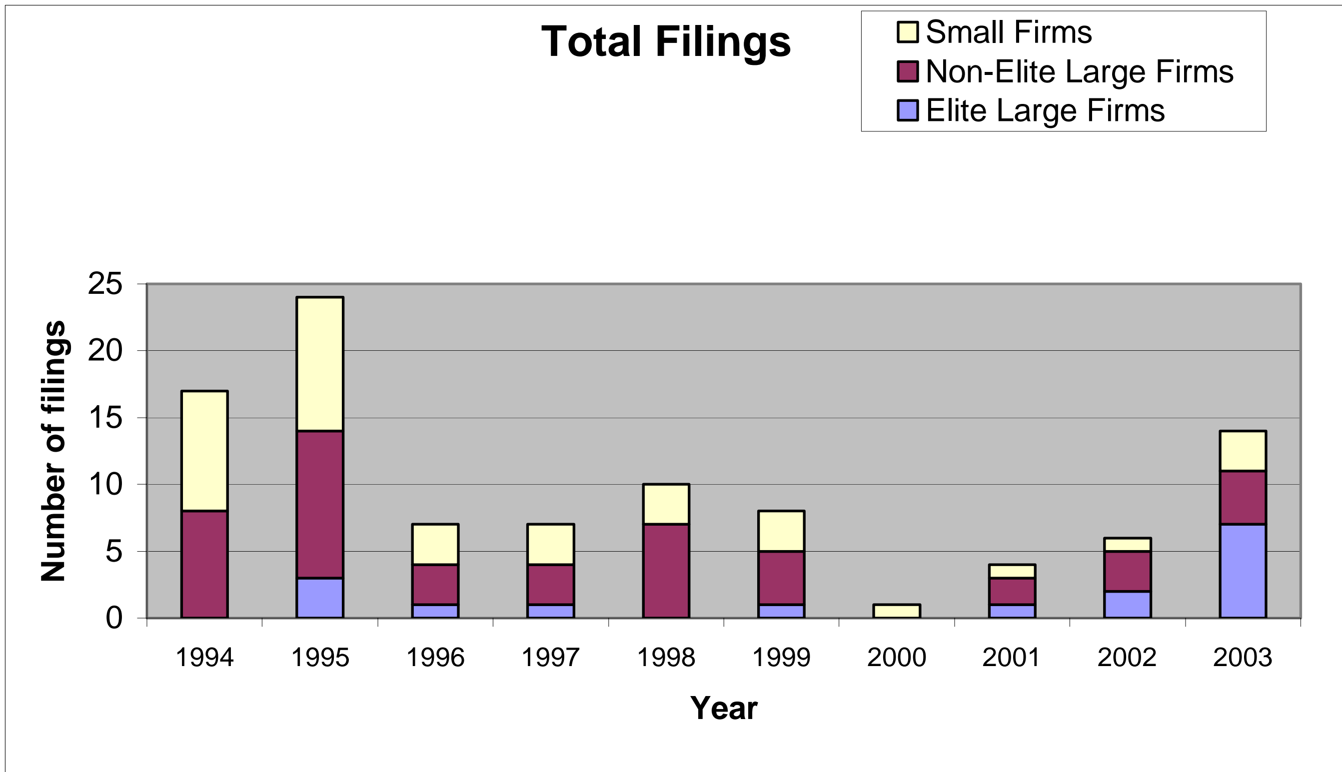

Chart 2